



# Indiana Department of Education

SUPPORTING STUDENT SUCCESS

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## **MEMORANDUM**

**TO:** Indiana State Board of Education

**FROM:** Robert A. Marra, Ed.D., Assistant Superintendent and  
Nina Lux Brahm, J.D., Division of Exceptional Learners Specialist

**RE:** SPECIAL EDUCATION RULE PROMULGATION

**DATE:** January 31, 2007

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Indiana's State Advisory Council for the Education of Students with Disabilities (the SAC) has completed its recommendations regarding the proposed revisions to Article 7 (Indiana's special education rules). The rule revision process was initiated to comply with changes in the federal law known as the *Individuals with Disabilities Education Act of 2004* (IDEA '04).

The purpose of this memorandum is to summarize the major issues in proposed Article 7. There is an explanation at the end of each issue describing the effects of the proposed change from the perspective of students, parents, and schools. Three of the issues listed recommend that the State Board change language proposed by the SAC. These recommendations have been highlighted in yellow.

A fiscal impact analysis of the proposed changes in Article 7 is being conducted by the Center for Evaluation & Education Policy (CEEP) at Indiana University. The results of this analysis will be presented to the State Board at its April 2, 2008 meeting.

Current plans call for the State Board to conduct five public hearings regarding the proposed revision of Article 7. These hearings will take place in late March, with the final hearing taking place during the April 2, 2008 State Board meeting.

## **SUMMARY OF MAJOR REVISIONS**

### **I. PRESCHOOL: LENGTH AND FREQUENCY OF INSTRUCTIONAL DAY AND CASELOAD REQUIREMENT**

Proposed language regarding preschool students with disabilities eliminates the full-time minimum hours of instruction per week requirement (12.5 hours). This requirement has been eliminated to give school corporations more flexibility to tailor the length and frequency of the instructional day to the unique developmental and educational needs of individual children. The proposed revision also eliminates the

caseload requirement of one teacher plus one instructional assistant for eight students, and one teacher plus two instructional assistants for 9 or 10 students. Under the proposed language, caseloads for preschool students would be determined (just as caseloads are determined for school aged students) by:

- The nature and severity of the students' disabilities;
- The type and intensity of services needed as specified in student IEPs;
- The chronological age of the students; and
- The total number of students with and without disabilities for whom the teacher has instructional responsibility.

Although caseload requirements will be eliminated, preschool programs will be monitored via the Department of Education's Continuous Improvement Focused Monitoring System (CIFMS). Indicators 6, 7, and 12 of the 20 indicator CIFMS process monitor preschool programs as explained below:

**Indicator 7** measures the percent of preschool children with IEPs who demonstrate improved:

1. Positive social-emotional skills (including social relationships).
2. Pre-academic knowledge and skills (including early language/communication and early literacy).
3. Appropriate behaviors used effectively to meet the child's needs.

**Indicator 6** monitors the percentage of preschool children with IEPs who received special education and related services in the least restrictive environment, which for some children means being educated in general education settings with peers who are not eligible for special education.

**Indicator 12** monitors the number of children who have been served in Part C (known as *First Steps* in Indiana for children aged 0 thru 3) and referred to Part B (special education) for eligibility determination. Note: 56.5% of all Indiana preschool students eligible for special education were previously served under Part C.

**THIS TABLE ILLUSTRATES THE COST OF PRESCHOOL PROGRAMS DURING THE 1999-00 SCHOOL-YEAR. THE DATA BELOW ARE FROM A STUDY CONDUCTED BY THE CENTER FOR SPECIAL EDUCATION FINANCE.**

STUDENT AGE	TOTAL EXPENDITURES PER STUDENT	PERSONNEL EXPENDITURE	OPERATING EXPENDITURE	CAPITAL EXPENDITURE	TRANSPORTATION EXPENDITURE
Preschool (3-5)	\$ 13,518	\$ 6,065	\$ 2,469	\$ 1,876	\$ 3,108
School Age (6-22)	\$ 10,847	\$ 5,979	\$ 3,005	\$ 1,254	\$ 609

**THERE ARE 13,286 PRESCHOOL STUDENTS ELIGIBLE FOR SPECIAL EDUCATION IN INDIANA (DECEMBER 1, 2007 CHILD COUNT).**

**PRESCHOOL STUDENTS GENERATE APPROXIMATELY \$4,300 THROUGH THE STATE FUNDING FORMULA AND FEDERAL FUNDS PER STUDENT PER YEAR.**

**Student Perspective: Allows students to receive the appropriate amount of services based on need as opposed to a one size fits all approach. Will allow students with disabilities to be educated more frequently with typically developing peers.**

**Parent Perspective: Allows parents the ability to advocate for the appropriate length, frequency, and duration of services.**

**Public Agency Perspective: Gives public agencies flexibility to base caseloads and the level of services on the unique needs of the students being served, which is the case for school-aged students.**

## **II. CONSENT FOR CHANGE OF EDUCATIONAL PLACEMENT**

IDEA '04 requires informed written parental consent in the following eight instances:

1. Before an initial evaluation to determine eligibility for special education.
2. Before a reevaluation, unless the parent fails to respond to reasonable efforts to obtain consent.
3. Before the provision of initial special education services (the first IEP).
4. Before a public agency can access a student's public insurance programs or private insurance proceeds.
5. Before the release of a student's educational records to officials of participating agencies providing or paying for transition services.
6. Before the exchange of educational records regarding a parentally placed nonpublic school student, between officials of the public agency where the nonpublic school is located and the school district of legal settlement.
7. Before the public agency can invite a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.
8. Before a member of a case conference committee (CCC) can be excused from a CCC meeting, in whole or in part, when the meeting involves a modification to, or discussion of, the member's area of the curriculum or related services.

Current and proposed Article 7 have an additional consent requirement: parental consent for a change of the student's placement. The DOE recommends that the State Board remove this additional consent requirement from Article 7. The reasons for this recommendation are set forth below.

IDEA '04 does not define the term "change of placement." However, current Article 7 defines the term broadly. Accordingly, schools must obtain consent for nearly every IEP, which means that students can be denied a free appropriate public education when:

1. Schools and parents cannot agree, for long periods of time, what constitutes appropriate services.
2. Schools acquiesce to parent demands to avoid due process.
3. Parents are not willing to attend CCC meetings or sign required paperwork.

Although IDEA '04 does not require consent for change of placement, it affords parents the procedural safeguards of mediation and due process if parents disagree with an IEP being proposed by the school. And proposed Article 7 affords parents an additional procedural safeguard – the right to request a meeting with an official of the public agency who has the authority to facilitate the dispute. This additional safeguard will save parents and schools from costly due process proceedings. The additional safeguard also makes sense because the first thing a school has to do after a parent requests a due process hearing is convene a meeting with the parent (called a resolution session) to try and resolve the dispute.

If a parent exercises the procedural safeguards of mediation or due process, the school is precluded under IDEA '04 from implementing the IEP it is proposing. Instead, the school must continue to implement the current IEP. This is known as IDEA's "stay-put" provision. Proposed Article 7 also grants the stay-put protection to parents who request the third type of procedural safeguard – a meeting with an official of the public agency who has the authority to facilitate the dispute.

Finally, proposed Article 7 gives additional guidance to the IDEA '04 requirement that IEPs be implemented “as soon as possible.” Proposed Article 7 states that IEPs must be implemented no later than 10 instructional days after the parent receives written notice regarding a student’s proposed IEP. Defining the term “as soon as possible” in this manner gives schools and parents a definite timeframe in which to make decisions. Parents will know that they have 10 instructional days to exercise one of the three procedural safeguards, and schools will be able to implement proposed IEPs with a solid degree of certainty that the parent agrees to the proposal after 10 instructional days have elapsed.

**RECOMMENDATION: DELETE THE REQUIREMENT PERTAINING TO CONSENT FOR CHANGE OF EDUCATIONAL PLACEMENT. THIS WILL ALIGN WITH IDEA '04. PARENTS HAVE PROCEDURAL SAFEGUARDS IN PLACE IF THEY DISAGREE WITH A PUBLIC AGENCY'S PROPOSAL (E.G., MEDIATION AND DUE PROCESS). ADDITIONALLY PROPOSED ARTICLE 7 AFFORDS PARENTS ANOTHER PROCEDURAL SAFEGUARD – THE RIGHT TO REQUEST A MEETING WITH AN OFFICIAL OF THE PUBLIC AGENCY WHO HAS THE AUTHORITY TO FACILITATE THE DISPUTE. THIS ADDITIONAL SAFEGUARD WILL PREVENT COSTLY DUE PROCESS HEARINGS. IF ANY OF THE THREE SAFEGUARDS ARE EMPLOYED BY THE PARENT, THE PUBLIC AGENCY CANNOT IMPLEMENT THE PROPOSED IEP. IT MUST CONTINUE TO IMPLEMENT THE CURRENT IEP. IF THE PARENT**

**Student Perspective: Would ensure that an agreed upon IEP is in place.**

**Parent Perspective: The role of the parent in the CCC decision-making process could potentially become more collaborative and productive. If parents disagree with IEPs proposed by schools, they can request a meeting, mediation, or a due process hearing. Exercising any of these procedural safeguards precludes schools from implementing proposed IEPs.**

**Public Agency Perspective: Would allow public agencies to implement proposed IEPs subsequent to initial IEPs unless parents disagree by exercising one of three procedural safeguards. This will require the public agency to consider factors and opinions leading to a reasonable proposal. Additionally, public agencies will be able to implement IEPs for students whose parents are not willing to attend CCC meetings or sign required paperwork.**

### **III. COMPREHENSIVE PLANS**

Comprehensive plans were first required by state statute in 1969 as a mechanism to ensure that all students with disabilities were part of an approved special education planning district. The plans required (and still require) a listing of participating school corporations (and now charter schools), enrollment, and how special education services would be provided. The Division, with a recommendation from the SAC, must approve a school corporations/charter schools withdrawal from a plan or admission to a plan.

**RECOMMENDATION: DELETE THE REQUIREMENT PERTAINING TO COMPREHENSIVE PLANS. THIS IS AN OUTDATED AND REDUNDANT WAY TO ENSURE APPROPRIATE SERVICES. THE SAME INFORMATION IS CONTAINED IN PLANNING DISTRICTS' ANNUAL IDEA-PART B FEDERAL FUND APPLICATIONS. ADDITIONALLY, DELETING THIS REQUIREMENT WOULD FURTHER THE DOE AND STATE BOARD'S GOAL OF MOVING TOWARD A SINGLE PLAN FOR PUBLIC AGENICES. NOTE: STATUTORY CHANGES WILL BE NECESSARY [IC § 20-35-3-1 and IC § 20-35-4-10].**

**Student Perspective: Comprehensive plans have no impact on the appropriateness or effectiveness of services provided to students.**

**Parent Perspective:** Comprehensive plans do not help parents determine which entity in the planning district is responsible for certain services. This information is contained in planning districts' joint service and supply agreements (IC § 20-26-10), special education cooperative agreements (IC § 20-35-5), and inter-local agreements (IC § 36-1-7).

**Public Agency Perspective:** Unnecessary paperwork and the need for an additional "plan" would be eliminated. The change would allow more flexibility and innovation at the local level, giving public agencies more control over the delivery of special education and related services.

#### **IV. DELETION OF THE GENERAL EDUCATION INTERVENTION PROCESS**

The proposed revision of Article 7 deletes the requirement that all public agencies have a general education intervention (GEI) process implemented at the building level. Instead, each public agency, as part of the student assistance services that must be provided under the state rule regarding student assistance services (511 IAC 7-4-1.5-5), may establish and maintain an integrated and focused system of prevention, assessment, intervention, problem solving, and referral for students who are experiencing problems that adversely affect educational performance. Under IDEA '04 and the proposed revision, parents of students participating in an integrated system that assesses a student's response to scientific, research based intervention must receive notification regarding data, services provided, strategies, and the parent's right to request an educational evaluation.

Additionally, the proposed revision requires public agencies to refer students for special education evaluations if they do not make adequate progress after an appropriate period of time, as determined by the parent and the public agency, when provided with scientific, research based interventions. Such an evaluation must be completed and the CCC convened within 20 days of obtaining parental consent for the evaluation.

The Department of Education recommends further discussion regarding state criteria for integrated and focused systems to support student success (also known as Response to Intervention). Such criteria could become part of Article 4, which contains the student services rule.

**Student Perspective:** Students will be the beneficiaries of effective, data driven instruction. Additionally, students will not have to "wait to fail" before receiving services. Finally, students will not be removed from general education experiences and expectations in cases where there is evidence of progress.

**Parent Perspective:** Parents' children will receive needed services and interventions at the same time that data is being collected. Additionally, parents will be notified about interventions, progress monitoring data, and the right to request an evaluation for special education eligibility.

**Public Agency Perspective:** Will focus and strengthen instruction. Student progress will be monitored and data will be used to solve problems related to learning. Will help schools achieve adequate yearly progress (AYP). Will reduce the number of students eligible for special education, which will reduce state funding to public agencies.

#### **V. TIMELINES FOR EDUCATIONAL EVALUATIONS**

Current Article 7 requires educational evaluations to be conducted and CCCs convened within 60 *instructional* days of the date that written parental consent is received by certified personnel. Under IDEA '04, evaluations must be completed in 60 *calendar* days, unless a state establishes a different timeline.

There are three problems with the evaluation timeline that is currently in place:

1. If a parent submits a signed written *request* for an evaluation to certified personnel, the written request serves as the parent's informed written *consent* for the evaluation. However, the comments to the IDEA '04 federal regulations state that a parent cannot give informed parental consent until the public agency has given the parent the requisite written notice regarding the educational evaluation.
2. Under current Article 7, there are often long delays between a parent's oral request for an evaluation and the school seeking a parent's signature on its consent form that allows the school to begin the evaluation.
3. Schools are required to hold meetings with parents before conducting evaluations in order to explain the evaluation process. IDEA '04 does not require such a meeting.

Under the proposed revision of Article 7, changes have been made to address the three problems set forth above and to align Article 7 with IDEA '04. Under the proposed changes, public agencies still have 60 instructional days for the educational evaluation process. However, the timeline is bifurcated into two parts:

**Part 1:** When a parent requests an evaluation, the public agency has 10 instructional days to provide the parent with written notice explaining why the public agency is conducting **or** refusing to conduct the evaluation. If the public agency is proposing to conduct the evaluation, it must explain the evaluation procedures to the parent. Ten instructional days gives the public agency adequate time to consider student data in order to thoughtfully prepare the required written notice regarding the evaluation. After the parent receives the public agency's written notice, the parent must provide written consent to the school before the school can begin the evaluation. **Parents can no longer begin the evaluation timeline simply by requesting an evaluation in writing. Additionally, the proposed revision deletes the requirement that public agencies hold personal meetings with parents to discuss the educational evaluation.**

**Part 2:** After the public agency secures written consent from the parent, it has 50 instructional days to conduct the evaluation. Note: if the parent delays providing the school with written consent, the evaluation will actually take more than 60 instructional days.

The following changes and flexibility have been built into Rules 40 and 41 to enable public agencies to complete evaluations in a timely manner:

1. IDEA '04 and the proposed revision of Article 7 create exceptions to the timeframe for completing educational evaluations. The timeframe does not apply if:
  - The parent of a student repeatedly fails or refuses to produce the student for the evaluation; or
  - A student enrolls in a school of another public agency after the evaluation timeline begins if:
    - The subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation; and
    - The parent and subsequent public agency agree to a specific time when the evaluation will be completed.
2. The proposed revision of Article 7 contains a definition of the term *assessment*. This definition explains that assessments can be norm-referenced, criterion referenced, and other types of procedures (such as informal tests, interviews, and observations). This definition will give public agencies a broader means to gather and interpret information about a student's cognitive, academic, social, emotional, behavioral, or functional performance.
3. Current Article 7 requires public agencies to conduct individualized standardized tests of learning capability (also known as cognitive assessments or intelligence quotient/I.Q. tests) for 11 of the 13 exceptionality categories. The proposed revision of Article 7 only requires a cognitive assessment if the following exceptionality categories are suspected: cognitive disability, multiple disabilities, and traumatic



brain injury. However, the multidisciplinary team can use its professional judgment to decide that a cognitive assessment will be conducted when other exceptionality categories are suspected (e.g., Autism Spectrum Disorder, emotional disability, or other health impairment) in order to rule out a cognitive disability.

4. Under current Article 7, the CCC and other qualified professionals review existing data to determine what should be included in a reevaluation. However, the comments to the IDEA '04 federal regulations advise that a review of existing data does not occur if the parent and the public agency agree that a reevaluation is not necessary. The proposed revision of Article 7 aligns with IDEA '04, which will save time and resources.

5. Current Article 7 requires certain types of medical records or medical evaluations (e.g., written reports and written diagnostic statements) to be included in educational evaluations for 7 of the 13 exceptionality categories. The proposed revision of Article 7 only requires medical information for three exceptionality categories (blind or low vision, deaf or hard of hearing, and deaf-blind). The proposed revision of Article 7 amends the other medical record requirements to *available medical information that is educationally relevant*. If the medical information is available and educationally relevant, it should be considered. If the information is not available, the multidisciplinary team will not be precluded from proceeding with the evaluation.

**Student Perspective: Under current Article 7, there are often long delays between a parent's oral request for an evaluation and the school seeking a parent's signature on its consent form that allows the school to begin the evaluation.**

**Parent Perspective: Will benefit parents because the process will not be delayed by the scheduling of a meeting (to explain the evaluation) that must accommodate several schedules. Instead, after a parent requests an evaluation, the school has 10 instructional days to provide the parent with written notice regarding whether it will conduct an evaluation. If the school chooses not to conduct an evaluation, it must explain what data it relied upon when making its decision. (The parent can challenge this decision.)**

**Public Agency Perspective: Public agencies will have to give written notice in every instance, but the evaluation timeline will not begin until written notice is given and parent consent is obtained. After parent consent is obtained, public agencies can take advantage of the changes and flexibility built into Rules 40 and 41 to complete evaluations in a timely manner.**

## **VI. SERVICES TO ALL PARENTALLY PLACED NONPUBLIC SCHOOL STUDENTS AND SERVICE PLAN REQUIREMENTS**

Under IDEA '04, students with disabilities enrolled in private schools by their parents have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. Public agencies must spend a proportionate share of their IDEA funding on nonpublic school students, but not every student is guaranteed services. However, current and proposed Article 7 require that all eligible students in private schools be offered some level of special education services because public agencies receive state Additional Pupil Count (APC) funds for these students. If the federal proportionate share of IDEA money is insufficient to cover the costs of providing services to private school students, public agencies are expected to use APC funds that have been generated by the private school students.

Under current Article 7, private school students must have IEPs. However, IDEA '04 only requires that private school students have service plans as opposed to IEPs. Service plans are not as detailed as IEPs and

do not have to meet all of a student's special education and related service needs. Proposed Article 7 aligns with IDEA '04, requiring service plans as opposed to IEPs for private school students.

Although service plans are not as detailed as IEPs, such plans must, to the extent appropriate, meet the requirements of IEPs. *See*, 34 CFR § 300.138(b)(2)(ii). The proposed revision fleshes out this requirement by requiring service plans to have the following components:

1. Student's present levels of educational performance.
2. Measurable annual goals related to services that will be provided.
3. Special education and related services or supports for school personnel.
4. Participation in statewide or district assessments and any accommodations.
5. Projected dates for initiation of services and length, frequency, and duration of services.
6. Student's progress toward annual goals including how the parents will be informed of the progress.

Note: IEPs for students with disabilities who attend public schools have 11 requirements and must be more detailed and specific than private school service plans.

Finally, IDEA '04 makes it clear that the private school provisions do not apply to students aged 3 thru 5 unless such students attend a private school that meets the definition of an elementary school (in Indiana this means a school that provides any combination of kindergarten and grades 1 through 8). This change makes it easier for public agencies to identify private preschools. Current Article 7 does not define private preschools, thus requiring public agencies to discern whether various day care arrangements constitute a private preschool.

**Student Perspective: Will provide more meaningful and standardized service plans. Preschool students will receive services from their school district of legal settlement unless they attend a private preschool (which will be clearly defined).**

**Parent Perspective: Nonpublic school parents have advocated for more meaningful service plans with goals related to the services.**

**Public Agency Perspective: Schools will no longer have to create IEPs for private school students. Service plans will require personnel to set goals related to the services provided, which will encourage accountability. Additionally, the changes will make it easier for public agencies to identify private preschools.**

## **VII. TRANSITION PLANNING FOR ADULT LIFE**

IDEA '04 changed the age at which transition planning begins from 14 to 16 years of age. However, a committee convened by the Indiana Department of Education's Division of Exceptional Learners recommended that Article 7 continue to require that transition planning begin at 14 years of age, primarily because career planning for nondisabled students also begins at approximately 14 years of age. *See*, IC § 20-30-4. Beginning transition planning at age 14 allows parent to make critical decisions before it is too late (e.g., putting a child on a Medicaid Home and Community-Based Waiver waiting list or deciding as a member of a CCC that a student will pursue a high school diploma versus a certificate of completion).

**Student Perspective: Will ensure that students have an educational program that adequately prepares them for adult life.**

**Parent Perspective: Allows parent to make critical decisions before it is too late (e.g., putting a child on a Medicaid Home and Community-Based Waiver waiting list or deciding as a member of a CCC that a student will pursue a high school diploma versus a certificate of completion).**



**Public Agency Perspective: Current Article 7 requires transition planning to begin at age 14, so this is not a change for public agencies. Public agencies will be able to combine transition planning efforts with career planning efforts, resulting in fewer meetings.**

## **VIII. “AGING OUT” OF SPECIAL EDUCATION**

Current Article 7 language states that students with disabilities are entitled to a free appropriate public education when they are at least 3 years of age, but less than 22 years of age. The proposed revision states that unless a student graduates from high school with a regular diploma, the right to a free appropriate public education ends at the conclusion of the school year in which the student turns 22 years of age. However, the CCC may determine that the student will leave school earlier.

Note: revisions have been made to Rule 46 to allow public agencies to “count” for state funding purposes, on the annual December 1<sup>st</sup> Count, students who are 22 years of age on December 1<sup>st</sup>.

Note also: Dr. Reed has executed a Memorandum of Understanding with the Family and Social Services Administration’s Division of Disability and Rehabilitative Services that helps facilitate the transition of students with developmental disabilities from school to adult services.

**Student Perspective: Allows students to remain in school the entire year in which they turn 22, as opposed to leaving school on their birthday or at the end of the semester in which they turn 22.**

**Parent Perspective: Will allow parents more time to ensure that adult services are in place.**

**Public Agency Perspective: Must provide services for a longer period of time, but the population is small, and the public agency will receive state funding.**

## **IX. EXTENDED SCHOOL YEAR SERVICES**

Current Article 7 defines “extended school year services” (ESY) to mean special education services that:

1. Are provided to a student with a disability:
  - A. Beyond the normal school year of the public agency;
  - B. In accordance with the student’s IEP; and
  - C. At no cost to the parent or the student; and
2. Meet the standards of the state educational agency.

The proposed revision defines the DOE’s standards by requiring CCCs to address the following questions when determining whether a student needs ESY services:

1. Whether the student:
  - A. will or is likely to experience a regression, which means a significant decline, in the mastery of critical skills as a result of an interruption of services; and
  - B. is not expected to recoup the level of critical skills within a reasonable period of time after the interruption of educational services.
2. Whether the student is at a critical point of skill acquisition or readiness, and the student’s ability to acquire the skill will be lost or greatly reduced as a result of an interruption of services.
3. Whether there are special circumstances that make extended school year services necessary to the provision of a free appropriate public education.

**Student Perspective: See below.**

**Parent Perspective: See below.**

**Public Agency Perspective: See below.**

**RECOMMENDATION: THE DOE RECOMMENDS THAT THE STATE BOARD DELETE THE QUESTIONS CCCs MUST ASK WHEN DETERMINING A STUDENT'S NEED FOR ESY. THESE QUESTIONS ARE EXPLAINED MORE THOROUGHLY IN A 10 PAGE TECHNICAL ASSISTANCE DOCUMENT THAT IS AVAILABLE TO SCHOOLS AND PARENTS ON THE INDIANA DEPARTMENT OF EDUCATION'S WEBSITE. THE ABBREVIATED TEXT IN PROPOSED ARTICLE 7, WITHOUT FURTHER EXPLANATION, MAY CONFUSE CCCs.**

## **X. BOARD OF SPECIAL EDUCATION APPEALS (BSEA)**

Current Article 7 language includes a two-tiered due process system. At tier one, an independent hearing officer (IHO) renders a decision regarding the issues. After the hearing officer renders a decision, the parties can appeal the decision to the Board of Special Education Appeals (BSEA). IDEA '04 allows a two-tiered due process system. The proposed revision of Article 7 maintains the current two-tiered system.

**Student Perspective: See below.**

**Parent Perspective: See below.**

**Public Agency Perspective: See below.**

The BSEA has played a vital role. As an administrative review body, if errors have been made at the hearing stage—and this can happen due to a number of factors, such as the time constraints for IDEA hearings and the actions of the parties themselves—such errors can be addressed and corrected without resort to lengthy and expensive courtroom proceedings. Errors are made at the trial level in any courtroom. If errors did not occur, there would be no need for any appellate body. Obviously, this is not the case, either with the courts or in administrative adjudicative processes. Errors are more likely to occur in the administrative process because of the time constraints and the less-formal proceedings. It is more imperative for an administrative review process.

Additionally, where the BSEA has found that there was a procedural or substantive error, this also enables the Department of Education to address any such anomaly with the IHO, either individually after jurisdiction has been relinquished or as a part of the annual training provided to both the IHOs and the BSEA members. The BSEA does not hinder the process but enables it, particularly in the expeditious resolution of disputes over the educational needs of students with disabilities.

### **Other Factors:**

1. The BSEA does not create an unnecessary burden but alleviates same by being able to address administratively purported errors in the initial hearing before the matter goes to a state or federal civil court with jurisdiction. Without the BSEA, aggrieved parties would have to raise such issues to a civil court and seek remand, an expensive and time-consuming process.
2. The BSEA does not create additional costs to the parties. In fact, the BSEA reduces the costs by addressing the myriad of issues being raised in due process hearings before such disputes reach the judicial review stage. This focuses the issues for judicial review.
3. The BSEA provides guidance on the application of procedural and substantive matters that enable the parties and the IHO to focus on relevant issues affecting the educational needs of students with disabilities.
4. The BSEA process ensures that a reviewing court receives an organized administrative record that addresses all issues raised, thus negating a party's attempt to needlessly supplement the record, name additional parties on judicial review who were not named in the administrative hearing or review (notably, the Department of Education and the State Board of Education), or invoke other laws for which administrative remedies were not exhausted.

## **XI. DIRECTOR OF SPECIAL EDUCATION**

Under current Article 7 and the proposed revision, each public school corporation, charter school and the department of correction, or two (2) or more school corporations or charter schools operating under an approved comprehensive plan, must employ a licensed director of special education to administer and supervise its special education program. This is not required under IDEA '04.

The Department of Education requests guidance from the State Board regarding the requirement pertaining to special education directors.